

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(ALEXANDRIA DIVISION)**

Volkswagen Group of America, Inc.)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.:
)	1:13-cv-01274-GBL-TRJ
APR, LLC)	
)	
Defendant.)	
)	
)	
)	

PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION TO DISMISS

Plaintiff Volkswagen Group of America, Inc. (“Plaintiff” or “VW Group”) submits the following opposition to the motion to dismiss (the “Motion”) (Doc. 13) filed by Defendant APR, LLC (“Defendant”). In support of its opposition, VW Group states as follows:

1. On December 12, 2013, Defendant filed its Motion, contending dismissal of the original complaint filed in this lawsuit (the “Complaint”) (Doc. 1) is warranted on the grounds that (1) the Complaint named a plaintiff that lacks capacity to bring suit and (2) the Complaint insufficiently pled subject matter jurisdiction. (Doc. 14 at 1-4.)

2. VW Group disputes that dismissal of the Complaint is warranted on either of these grounds. To the extent Defendant has raised any issue that could constitute a basis for dismissal, however, VW Group has filed the first amended complaint (the “First Amended Complaint”) (Doc. 16) that cures all potential defects raised in Defendant’s Motion.

3. Defendant’s Motion first contends that dismissal of this lawsuit is warranted on the basis that the plaintiff named in the Complaint lacks capacity to sue under Virginia law because it is an unincorporated business unit of another corporation. (Doc. 14 at 1.)

4. The Complaint named as plaintiff “Audi of America, an unincorporated business unit of Volkswagen Group of America, Inc.” (Doc. 1 at 1.) The First Amended Complaint names as plaintiff “Volkswagen Group of America, Inc.” and clarifies that VW Group brings suit “on its own behalf and on behalf of its unincorporated business unit Audi of America.” (Doc. 16 at 1.)

5. Defendant’s Motion also contends that the Complaint should be dismissed on the grounds of insufficiently pled subject matter jurisdiction because the Complaint did not identify the citizenship of the individual members of Defendant’s LLC. (Doc. 14 at 2-3.)

6. The First Amended Complaint identifies each individual member of Defendant’s LLC and its respective citizenship. The First Amended Complaint

therefore sufficiently pleads proper diversity jurisdiction in specifying that each member of Defendant's LLC is a citizen of the State of Alabama, while Plaintiff is a New Jersey corporation headquartered in Virginia *See* 28 U.S.C. § 1332(a)(1) (recognizing diversity jurisdiction exists where plaintiff and defendant are citizens of different states).

7. Accordingly, Plaintiff's First Amended Complaint cures all potential defects raised in Defendant's Motion.

8. On December 17, 2013, Plaintiff's counsel conferred with Defendant's counsel, who consented to VW Group's filing of the First Amended Complaint, which substitutes as named plaintiff "Volkswagen Group of America, Inc." for "Audi of America, unincorporated business unit of Volkswagen Group of America, Inc." and also cures any potential defects in pleading subject matter jurisdiction by identifying the citizenship of each individual member of Defendant's LLC. (Doc. 16.)

9. Plaintiff has timely filed its First Amended Complaint as a matter of course pursuant to Rule 15 of the Federal Rules of Civil Procedure. Rule 15 provides that "a party may amend its pleading once as a matter of course" within 21 days "after service of a motion under Rule 12(b)." Fed. R. Civ. P. 15(a)(1)(B). Defendant filed its Motion pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure on December 12, 2013 (Doc. 13 at 1), and Plaintiff filed its First

Amended Complaint on December 20, 2013. (Doc. 16.) The First Amended Complaint was therefore timely filed as a matter of course.

10. Because the First Amended Complaint cures all potential defects raised in Defendant's Motion, the Motion is due to be dismissed as moot.

WHEREFORE, Plaintiff Volkswagen Group of America, Inc. respectfully requests that this Court deny Defendant's Motion to Dismiss.

Respectfully submitted,

s/ Michael S. Koplan

Michael S. Koplan (VA Bar # 32893)

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CERTIFICATE OF SERVICE

I hereby certify that on December 26, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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s/Michael S. Koplan

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